No. [redacted] 86

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM [redacted] 1958

JESSE I. LINDER,
Appellant,

vs.

HOWARD B. COLLINS, LEONARD PILGER, and GEORGE L. BARTON, as members of The Board of County Commissioners of Wallace County, Kansas; E. L. RIVERS, ED V. MORIN, GLEN HUFFMAN, GEORGE HARRISON and EARL TEED, as members of The Board of Hospital Trustees of Wallace County, Kansas; C. E. SWANSON, as County Clerk of Wallace County, Kansas; BONNIE KNOUSE, as County Treasurer of Wallace County, Kansas; and JAMES W. BIBB, as the Budget Director of the State of Kansas,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

JURISDICTIONAL STATEMENT.

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Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS.

JURISDICTIONAL STATEMENT.

Appellant appeals from the judgment of the United States District Court for the District of Kansas entered on February 6, 1958, dismissing after notice and hearing appellant's complaint for want of jurisdiction, and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW.

The opinion of the United States District Court for the District of Kansas is not yet reported. A copy thereof, which includes conclusions of law and the decree of the court, is attached hereto as Appendix "A".

JURISDICTION.

This action was brought under Title 28 U.S.C., sections 1343, 2201, 2281 and 2284 to procure a permanent injunction enjoining the defendants and their successors in office from enforcing against appellant the provisions of Chapter 153, Laws of Kansas, year 1955 (Section 1848a of the general statutes of Kansas, year 1949, as amended by the laws of Kansas, for year 1955), including the assessment and collection of taxes thereunder. No temporary injunction was sought.

The judgment of the District Court was entered on February 6, 1958, and notice of appeal was filed in that court on April 7, 1958. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, U.S.C., sections 1253 and 2101(d). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Doud vs. Hodge,* 350 U.S. 485; *Brown, et al. vs. Board of Education,* 347 U.S. 483; *Morey vs. Doud,* 354 U.S. 457; *Hines vs. Davidowitz,* 312 U.S. 52; *Valentine vs. Great Atlantic & Pacific Tea Co.,* 299 U.S. 32.

THE STATUTE INVOLVED.

Section 1848a of General Statutes of Kansas, year 1949, as amended by the laws of Kansas for the year 1955 (1957 supplement to General Statutes of Kansas 1949) reads as follows:

> "19-1848a Lease of hospital building for medical clinic or health center in certain counties; use of hospital funds; acts validated. Any county which has voted to establish a county hospital under the provisions of 19-1801 to 19-1815, both sections inclusive, of the General Statutes of 1949 and acts amendatory thereof and supplemental thereto, has levied and collected taxes thereunder and has constructed a building, which building has not and cannot be licensed as a hospital under the provisions of sections 65-425 to 65-441, both sections inclusive, of the General Statutes of 1949, is hereby authorized to lease said building to any person, corporation or society for the purpose of operating and maintaining therein a medical clinic or health center, upon such terms and conditions as the Board of County Commissioners may deem for the best interests of the county. Said county is further authorized to expend any balance remaining in the fund derived from the tax levy made to establish a hospital, and any amounts received as gifts and donations, for the purpose of furnishing and equipping the building for use as such medical clinic or health center. All proceedings and contracts in connection with the levying and collection of taxes and the construction of said building by the county are hereby validated and confirmed." (L. 1955, Ch. 153, No. 1; March 31).

QUESTIONS PRESENTED.

(1) Whether in a suit invoking the jurisdiction of the District Court pursuant to title 28 U.S.C., Section 1343, the jurisdiction of the District Court is dependent on the matter in controversy exceeding the sum or value of $3000.00 exclusive of interest and costs;

(2) Whether in a suit invoking the jurisdiction of the District Court pursuant to 28 U.S.C., Section 1343, the jurisdiction of the District Court is dependent upon there being diversity of citizenship between plaintiff and defendant;

(3) Whether in a suit invoking the jurisdiction of the District Court pursuant to 28 U.S.C., Section 1343, wherein plaintiff alleges the deprivation of rights secured to him by the Constitution of the United States the court has jurisdiction to grant other relief sought although incidental thereto a particular part of the relief sought involves the levy or collection of a tax under state law, there being a plain, speedy and efficient remedy in the state courts for such particular part of the relief sought.

STATEMENT.

Plaintiff, a citizen of Wallace County, Kansas, filed a complaint in the United States District Court for the District of Kansas against several Wallace County public officials seeking to invoke the jurisdiction of the District Court pursuant to Title 28 U.S.C., Section 1343.

In summary, the complaint alleged that in April, 1949, the people of Wallace County, Kansas, voted to establish

the Wallace County Hospital, a governmental subdivision having perpetual existence, all pursuant to the General Statutes of Kansas, year 1947, Chap. 19, Section 1801 and Acts supplemental thereto, that the Kansas laws under which said county hospital was established then and now (a) specifically define and provide what a county hospital is and what services and functions it shall render and perform, (b) provide for the design, erection and licensing of county hospital buildings under Rules and Regulations promulgated by the Kansas State Board of Health, and (c) provide that no discrimination shall be made against any practitioners of any school of medicine or healing recognized by the laws of Kansas, that all such practitioners shall have equal privileges in treating patients in such a hospital, that a patient shall have the absolute right to employ at his or her own expense his or her own physician and that when acting for any patient in such a hospital such physician shall have exclusive charge of and care and treatment of such patients, that the nurses therein shall as to such patients be subject to the directions of such physicians under the general rules providing for the impartial and equitable administration of such a hospital and that in general the spirit and true intent of the Act should be carried out in establishing and maintaining a county public hospital with equal rights to all and special privileges to none.

That plaintiff as an owner of real property in said county and as a resident and citizen thereof and of the State of Kansas and of the United States, paid taxes for the year